

CHARITY COMMISSION FOR ENGLAND AND WALES

CATHOLIC CARE (DIOCESE OF LEEDS)

DECISION MADE ON 21 JULY 2010

APPLICATION FOR CONSENT TO A CHANGE OF OBJECTS UNDER SECTION 64 OF THE CHARITIES ACT 1993

Issues before the Commission

1. The Charity Commission (“the Commission”) considered an application by a charitable company, Catholic Care (Diocese of Leeds) (“the charity”) for consent to a proposed change to its objects under section 64 of the Charities Act 1993 (“the 1993 Act”).

Decision

2. The Commission has looked carefully at the legal position regarding charities and discrimination on the grounds of sexual orientation. It considers that the prohibition of such discrimination is a fundamental principle of human rights law and can only be permitted where there are “*particularly convincing and weighty reasons*”¹ for the discrimination. The Commission has considered the evidence carefully and does not consider that the proposed reasons for the discrimination are sufficiently weighty to justify the discrimination as a proportionate means of achieving a legitimate aim.
3. Further analysis of these issues is set out below.

Background to the Decision

4. On 17th March 2010 the High Court allowed an appeal from the charity against a decision of the Charity Tribunal² (“the Tribunal”) dated 1 June 2009. The Tribunal had upheld a decision of the Commission to refuse consent to a proposed change of objects of the charity under section 64 of the 1993 Act. The High Court remitted the case back to the Commission to consider the application of the charity in accordance with the principles set out in the approved judgment of Mr Justice Briggs dated 17 March 2010 (“the Approved Judgment”).
5. The charity had applied to the Commission for consent to a change of objects permitting the charity to only provide its adoption service to prospective parents who are heterosexual. The Commission refused to give consent because it considered that even if the charity changed its objects as proposed it would not be able to

¹ **EB v France** (2008) 47 EHRR 21

² now the First-tier Tribunal (Charity)

discriminate as it wished to do. This was because the Commission considered that the exemption for charities in regulation 18 of the Equality Act (Sexual Orientation) Regulations 2007 (SI 2007/1263) (“the sexual orientation regulations”) only applied where the governing document of a charity permitted it to provide benefits to persons of a particular sexual orientation. The Commission considered that this only included benefits provided to persons who were the charitable beneficiaries. In the case of a charitable adoption service the beneficiaries were the children and not the parents.

6. The reasoning of the Commission was rejected by the Tribunal but it considered that the proposed discrimination would be unlawful for other reasons. Accordingly, the Tribunal had upheld the refusal of consent by the Commission. As stated above, the High Court rejected both the reasoning of the Tribunal and the reasoning of the Commission.

Principles set out by court for determining the application

7. The principles set out in the Approved Judgment by Mr Justice Briggs in accordance with which the Commission has to re-consider the application of the charity for consent to the proposed change of objects are as follows:
 - 7.1 Under the Commission’s standard procedure for dealing with applications for consent to amend objects under section 64 of the 1993 Act as set out in OG47, the Commission considers whether “*the new wording expresses exclusively charitable purposes*” (OG47 A1 paragraph 4.1). The court considered this was the correct procedure.
 - 7.2 In considering whether the purposes are charitable, the Commission needs to consider whether they are for the public benefit. The proposed discrimination on the basis of sexual orientation is not likely to be for the public benefit unless it is a proportionate means of achieving a legitimate aim. (paragraph 97 of the Approved Judgment)
 - 7.3 The legitimate aim identified by the court in this case was that “*of providing suitable adoptive parents for a significant number of children who would otherwise go un-provided for*”. (paragraph 107(iv) of the Approved Judgment)
 - 7.4 In deciding whether the proposed discrimination was a proportionate means of achieving that legitimate aim, the case law indicated that “*particularly convincing and weighty reasons*” were required.
 - 7.5 The charity’s argument was that the contributions it received from the Roman Catholic Church and other Roman Catholic

supporters would not be made if the charity provided its adoption services to persons who were not heterosexual. The reason given for this was that the Catholic model of family life was the Holy Family of Nazareth. As a result of this, if the charity could not discriminate, it would have to close its adoption service down and some of the children that could have been placed for adoption would not be placed for adoption at all.

- 7.6 The Court considered that *“the respect for the religious beliefs motivating such faith-based adoption agencies would not be likely to constitute a justification of differential treatment in favour of heterosexual couples under Article 14 (of the European Convention on Human Rights) because of the essentially public nature of their activities, carried out to a significant extent on behalf of local authorities, and funded to a greater or lesser extent by them.”* (paragraph 84 of the Approved Judgment)
- 7.7 The Court set out in paragraph 107 of the Approved Judgment the arguments of the charity as to the justification for the proposed discrimination. This justification was not based directly on respect for Roman Catholic beliefs but on the practical effect of the charity not being able to discriminate i.e. closure of its adoption service. The Court indicated that *“the evidence adduced before the Tribunal was in my judgment sufficient to display a prima facie case on the facts for each of the steps in the justification analysis advanced by Mr McCall (the charity’s counsel).”* (paragraph 108 of the Approved Judgment)
- 7.8 The Court went on to state: *“Even if the factual analysis was indisputable, the question whether it would constitute the particularly clear and weighty reasons required for justification under Article 14 is by no means straightforward.”* (paragraph 108 of the Approved Judgment)
- 7.9 The Court concluded: *“I have no reason to suppose that, directed as to the true interpretation of Regulation 18, the Charity Commission will not properly be able to carry out that analysis, either on the facts thus far proved, or upon the basis of such further evidence as it may consider necessary and appropriate to take into account.”* (paragraph 110 of the Approved Judgment)
- 7.10 The court indicated that the matter *“should now be resolved with as much expedition as the circumstances permit”*.

The present application

8. On 27 April 2010 the charity’s solicitors renewed its application for consent to a change of objects under section 64 of the 1993 Act.
9. The charity describes itself on its website in the following terms:

“Catholic Care is a charitable organisation working on behalf of the diocese of Leeds. It offers a variety of services and support not only to the Catholic population, but also to the wider community as a whole.”

10. The website goes on to say:

“Over a hundred years of pioneering social work in relation to child welfare, poverty relief and social reform has developed Catholic Care as one of the leading charities in the North of England, caring for children, older people, disabled and disadvantaged people of all ages. Our work currently ranges from a well respected adoption and family finding service to supported living for people with learning disability, care homes, volunteer work and community projects. Our work is making a real and significant difference to the quality of life of hundreds of people.”

11. As part of its services to the community, the charity operates a voluntary adoption agency. The charity states the following on its website regarding its adoption service:

“The placement of vulnerable children is an overriding feature of our work. The adoption service undertakes assessments of prospective adoptive married couples or single people. The assessment process is a vital tool in assessing an applicant's suitability to parent through adoption. The Adoption Team also support adopters as they strive to develop secure relationships with the children placed.”

12. The charity's unrestricted income for the year ending 31 March 2009 was £4,216,088. The resources expended by the charity on furthering its purposes were £4,214,711. Of this, the amount expended on the activities of the adoption service provided by the charity was £193,715. The charity itself has estimated that its adoption work represents *“about 5% of the work of the Charity by turn-over”*³.

13. Adoption service agencies specialise in finding adoptive parents for children who are unable to remain with their family of birth. They offer these prospective parents as permanent adoptive parents for children many of whom have special or complex needs. Local authorities are alone responsible for making such placements, and they approach adoption agencies when they cannot make a placement from within their own resources. Adoption agencies are involved throughout the adoptive process which includes various stages such as: training; preparation classes; police checks; interviews; medical examinations; and a detailed assessment of the parent's suitability to become an adoptive parent.

³ paragraph 23 of the Witness Statement of His Lordship the Roman Catholic Bishop of Leeds dated 18 January 2009

14. The current objects of the charity are:

- *“To promote, in the Roman Catholic Diocese of Leeds the relief of poverty and distress among children and all those who through economic or family circumstances or physical or mental affliction are in need of such relief.*
- *To promote and organise co-operation among Roman Catholics and others in the achievement of the above object.”*

15. The proposed objects of the charity are:

“3. Objects

3.1 Subject to the restriction in Paragraph 3.2 below, the Charity's objects (the Objects) are:

3.1.1 the advancement of the Christian religion in accordance with the tenets of the Roman Catholic Church (the Church);

3.1.2 the prevention and relief of poverty and suffering by the provision of such grants, goods, service or facilities as the Charity shall from time to time determine;

3.1.3 the relief of sickness and preservation of health;

3.1.4 the advancement of:

3.1.4.1 education; and

3.1.4.2 social justice,

only insofar as they further the Christian religion in accordance with the tenets of the Church;

3.1.5 the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;

3.1.6 the advancement and promotion of the support, relief and care of:

3.1.6.1 children and young people without families to care for them, including, but not limited to, adoption and fostering services;

3.1.6.2 children and young people in trouble or at risk;

3.1.6.3 elderly people and their carers;

3.1.6.4 people with disabilities; and

3.1.6.5 individuals, families, communities and groups who are in need;

3.1.7 to provide or assist in the provision of facilities in the interest of social welfare for recreational or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmity or disability, financial hardship or social circumstances with the object of improving their conditions of life; and

3.1.8 any activity which is charitable under the laws of England, save that if any activity is undertaken in Scotland or Northern Ireland, such activity shall also be charitable under the laws of the jurisdiction in which such activity is undertaken.

3.2 The Charity shall only provide assistance to persons seeking to act as adoptive parents if they are heterosexuals and such services to heterosexuals shall only be provided in accordance with the tenets of the Church. For the avoidance of doubt the Roman Catholic Bishop of Leeds from time to time shall be the arbiter of whether such services and the manner of their provision fall within the tenets of the Church.

3.3 For the avoidance of doubt the restriction at Paragraph 3.2 above shall apply only to services relating to the preparation or support of persons seeking to act or having been approved as adoptive parents."

16. The charity is clear about the aim of the proposed change. In paragraph 2.1 of their submission dated April 2010 they state:

"The aim of the Proposed Objects was to permit the Charity to limit its adoption services to potential adoptive parents on the grounds of sexual orientation; specifically to those individuals who are heterosexual."

17. The charity accepts that it is required to provide "*particularly clear and weighty reasons to show that the proposed discrimination would not be an impermissible contravention of the rights protected by Article 14 of the Human Rights Act 1998.*"
18. In outlining its position, the charity states that to provide its adoption service, the charity "*requires additional income from that which is provided as a result of its direct activities of between £100,000 and £200,000 a year.*" The Roman Catholic Church ("the Church") "*is a source of such income on which the Charity feels able to rely. The Charity knows of no other such source of income.*"
19. Adoption work is one aspect of the charity's work which also includes residential care for children, supported living for adults with learning

disabilities, supported living for adults with mental health issues, advice support and counselling in schools, support to vulnerable and marginalised people through community development work, and support for older people in the community.

20. The charity was not proposing to discriminate on the grounds of sexual orientation in the provision of any of these other services. The reason it wishes to discriminate on these grounds in the provision of its adoption service is that *“the overriding principles of the Charity are to accord with Catholic principle and above all the principle that the model of family life to be borne in mind is the model of the Holy Family at Nazareth”*.
21. The charity states that *“the Bishop of Leeds has confirmed that the tenets of the Church describe a family unit as being in the image of the Nazarene family; namely a married couple with a child or children. The tenets do not recognise a union between two people of the same sex and, therefore, the creation of [such] a family unit by an agency connected to the Church is not permissible.”* As a result, the charity cannot provide an adoption service which does not discriminate and remain connected to the Church.
22. The charity does not consider that operating as an open adoption agency outside the Church is an option because it has a wide social care remit and it *“cannot separate these other areas of its work from the support of the Church based only on the grounds of adoption”*.
23. The charity does not consider hiving off the adoption agency is an option either. This is because it would lose income flowing to it as a result of the support of the Church. *“Losing the voluntary income associated to adoption would result in the services making a loss and the Charity was not able to find any donors in the short term who would agree to provide funding to the new charity.”*
24. Accordingly, the charity considers it has only two options:
 - a) To obtain the consent of the Commission to the proposed objects so that it can lawfully discriminate; or
 - b) to close the adoption service.
25. The reasons which the charity consider justify the proposed discrimination are summarised in paragraph 13.3 of their application which states as follows:
 - 13.3.1. *“there are currently in excess of 4,000 children in England and Wales waiting to be adopted;*
 - 13.3.2. *many of these children have been waiting many years to be adopted (about 1,000 in each year are never found an adoptive family) (see Loughborough Study);*

- 13.3.3. *there are not enough adoptive parents in England and Wales to be matched with the children waiting for adoption;*
- 13.3.4. *many of the children waiting to be adopted are “hard to place”, and if the potential adoptive parents are not properly prepared to take on a child with these special needs, whether medical, behavioural or simply to keep a sibling group together the placement may fail;*
- 13.3.5. *local authorities have great difficulty in achieving placement of children with special needs, by far the majority of placements achieved by local authorities relate to easy to place children such as single well adjusted children or babies without any for of special need;*
- 13.3.6. *the failure rate of adoptions resulting from parents recruited and approved by local authorities is approximately 20%, whilst easy to place children make up over 60% of local authority approvals. These figures indicate that the almost half of the hard to place placements organised by local authorities fail;*
- 13.3.7. *this can be contrasted with all of the Charity’s placements relating to hard to place children and a failure rate of only 5% at worst;*
- 13.3.8. *as local authorities only approach the Charity to seek to place children with potential adoptive parents approved by the Charity once the local authority has exhausted all other alternatives;*
- 13.3.9. *there are no alternative ways in which the Charity can restructure itself that would permit the adoption services to be undertaken independently or in an open manner;*
- 13.3.10. *as the Charity is a place of last resort there are no other alternatives for the children who are matched with parents approved by the Charity;*
- 13.3.11. *a result of the closure of the adoption services operated by the Charity would be that:*
- (i) there will be fewer potentially adoptive parents;*
 - (ii) the services currently provided by the Charity would be lost;*
 - (iii) there would not be an organisation which could take over the specialist training of potential adopters of children with special needs in the area*

in which the Charity operates meaning that there would be a further increase in the number of children remaining in the care of the local authority and/or the placement failing and the children being returned to the care of the council;

13.3.12. *there is an overwhelming need for voluntary adoption services in the UK and any decrease in the number of voluntary adoption agencies may result in a significant reduction in the number of children with special needs being placed with a family;*

13.3.13. *the discrimination arising from the Charity not providing adoption services to a homosexual couple would not prevent that couple from adopting as they would be referred to another agency. Further, the couple would not be prevented from using another voluntary adoption agency should they wish to adopt a "hard to place" child;*

13.3.14. *there are numerous non-faith based voluntary adoption agencies which can claim the high average success rate for hard to place children while there are the local authority agencies which can be expected to meet the need of the couple [who] wish to find an easy to place child."*

26. Between 2000 and 2010 the charity approved the adoptive parents of 116 children.

27. From 2000 to 31 December 2008 the charity approved 95 married adoptive couples. Of these couples:

48 couples registered as Catholics

13 couples registered as Church of England

14 couples registered as being affiliated with other Christian denominations

2 couples were Muslim

1 couple was Sikh

Approach of the Commission

28. The application is made under section 64 of the 1993 Act which requires the Commission's prior written consent to any regulated alteration of a charitable company's articles.

29. The Commission's procedure for dealing with section 64 applications is set out in OG47. OG 47 A1 at paragraph 4.1 states:

“Essentially we need to be satisfied that, if the change to the objects is material

- *the new wording expresses exclusively charitable purposes; and*
- *the proposed change is not a proposal which no body of reasonable trustees could make. (If you consider the proposal is completely unreasonable, take legal advice); and*
- *the proposed change does not undermine or work against the previous objects of the charity.”*

30. Part of the Commission’s consideration on such an application is whether the new objects are for a charitable purpose. A charitable purpose is defined in section 2 of the Charities Act 2006 (“the 2006 Act”) as a purpose which—

“(a) falls within subsection (2), and

(b) is for the public benefit”

31. The Commission is a public authority and under section 6 of the Human Rights Act 1998 is required to act in a way which is compatible with the rights in the European Convention on Human Rights (“the European Convention”). Section 3 of the Human Rights Act 1998 requires that *“so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.”*

32. The Commission has had regard to the comments of Mr Justice Briggs in paragraph 97 of the Approved Judgment. He states:

“An organisation which proposes to fulfil a purpose for the public benefit will only qualify as a charity if, taking into account any dis-benefit arising from its modus operandi, its activities nonetheless yield a net public benefit: see above. Thus, a charity which proposed to apply differential treatment on grounds of sexual orientation otherwise than as a proportionate means of achieving a legitimate aim might thereby fail to achieve charitable status (or lose it, if it sought to pursue such activities by amendment of its objects).”

33. The Commission also notes the comments of Mr Justice Briggs in paragraph 101 of the Approved Judgment:

“I find it difficult to imagine circumstances where the Commission, properly directing itself, could conclude that it was expedient in the interests of a particular charity to exercise its regulatory powers so as to allow it to act in a manner incompatible with Convention rights under Article 14.”

34. The Commission therefore considers that it is necessary for it to decide whether the proposed discrimination is a proportionate means of achieving a legitimate aim. If the proposed discrimination is not justified under Article 14 of the European Convention, the Commission considers that the proposed objects would not be for the public benefit because of *“the large public dis-benefit likely to flow from any unjustified, and therefore discriminatory, differential treatment.”*⁴
35. The Commission notes that the charity agrees that the objects can only permit the proposed discrimination if providing the benefits to heterosexuals only is a proportionate means of achieving a legitimate aim.
36. The current objects of the charity are the relief of poverty which is a purpose within section 2(2) of the 2006 Act. The proposed objects include a number of other purposes – namely, the advancement of religion, the advancement of health, the advancement of education, the relief of need, which are specifically within section 2(2) of the 2006 Act. There are also other purposes, some of which fall within section 2(4) of the 2006 Act in that they have been previously recognised as charitable and so come within subsection (2). There is also some repetition and there are some purposes which are not necessarily an acceptable purpose e.g. advancement of social justice. Paragraph 3.1.8 confuses activities and purposes.
37. Accordingly, if the application were to have been approved in principle, there would have needed to be some discussion with the charity as to what would be acceptable with regard to the drafting of the proposed purposes. The charity acknowledged it would have been willing to discuss such details about the formulation of these purposes if the basic principle of its proposals had been accepted.
38. The main issue is the wish of the charity to limit its adoption service to prospective parents who are heterosexual.

Proportionate means of achieving a legitimate aim

39. As set out above, the Commission has to decide whether the proposed discrimination on the ground of sexual orientation is a proportionate means of achieving a legitimate aim. The legitimate aim identified by the court was that *“of providing suitable adoptive parents for a significant number of children who would otherwise go un-provided for”*.
40. The rights of same sex couples to be considered as prospective parents in adoption and not to be discriminated against in their wish

⁴ Mr Justice Briggs in paragraph 99 of the Approved Judgment

to do so fall within Article 8 of the European Convention, the right to respect for private and family life. This article states:

“1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*”

41. The article also sets out the circumstances in which it is possible to interfere with this right:

“2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*”

42. Once an article of the European Convention is engaged, article 14 also applies. This article states:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

43. Regulation 18 of the sexual orientation regulations⁵ states:

“(1) *Nothing in these Regulations shall make it unlawful for a person to provide benefits only to persons of a particular sexual orientation, if*

(a) *he acts in pursuance of a charitable instrument,*

and

(b) *the restriction of benefits to persons of that sexual orientation is imposed by reason of or on the grounds of the provisions of the charitable instrument.”*

44. The Judge in the Approved Judgment considered that, in order to comply with human rights law, this exception would only apply where the provision of benefits to persons of a particular sexual orientation was a proportionate means of achieving a legitimate aim.

45. Accordingly, the Commission needs to decide whether limiting the adoption service to prospective parents who are heterosexual is a

⁵ Section 193 of the Equality Act 2010 will replace regulation 18 with effect from a date to be appointed. Accordingly, regulation 18 remains in force at the date of this decision.

proportionate means of achieving the legitimate aim of providing suitable adoptive parents for a significant number of children who would otherwise go un-provided for.

Sources of Information

46. In making its decision the Commission was guided by the principles set out by Mr Justice Briggs in the Approved Judgment and by the relevant legislation and case law. The court clearly envisaged that the Commission might consider it was necessary and appropriate to take into account further evidence to that which was already before the court⁶.
47. In addition to the submission by the charity's solicitors dated April 2010, the Commission reviewed the evidence submitted to the Tribunal and also obtained information from Ofsted, British Association for Adoption and Fostering, New Family Social – a network of gay and lesbian adopters, and several local authorities.
48. The Commission also received an unsolicited submission from the Equality and Human Rights Commission ("the EHRC") regarding their view on human rights law and the charity's case as presented in the High Court. The EHRC was an intervener in that case.
49. Copies of the additional information obtained or received by the Commission were sent to the charity which was given an opportunity to respond both in writing and at the oral component of the application process which took place on 2 July 2010. The charity was represented at the oral component by its solicitor and by its former Chief Executive and two trustees who themselves in the past had served as chief officer of the charity.

Weighty reasons

50. The charity summarises the weighty reasons on which it is relying in paragraph 13.3 of its submission of April 2010. The charity makes a number of assertions on which the Commission wished to obtain the views of the local authorities responsible for placing children for adoption.
51. The Commission noted that in the Approved Judgment, Mr Justice Briggs in paragraph 107(ii) expressed part of the submissions of the charity as follows:

"For those children, usually of the "hard to place" category, Catholic Care was the adoption agency of last resort for the local authorities concerned, whose practice was to have recourse to Catholic Care only when all other avenues for the identification of willing and suitable adoptive parents had failed.

⁶ Paragraph 110 of the Approved Judgment

But for Catholic Care's work in that field, those children would therefore not have been adopted that year or, probably, at all."

52. It was noted that in the charity's summary of the weighty reasons it was relying on in its submission of April 2010, reference was made to the charity being "*a place of last resort*" rather than "*the adoption agency of last resort*". The charity acknowledged that it was not claiming to be the only agency of last resort; the charity was one of a number of adoption agencies which provided adoption services for hard to place children. It was noted from the helpful reports provided by the charity on the operation of the adoption process, that local authorities prefer to place children through their own adoption agencies if they can do so before seeking to use voluntary adoption agencies. Accordingly, all children placed through voluntary adoption agencies are usually hard to place children.
53. The above paragraph from the Approved Judgment set out in paragraph 51 was not supported by the further evidence of the charity and by the responses received from local authorities.
54. The charity provided the Commission with the names of thirteen local authorities with which the charity works. The Commission wrote to all of them. Six replied. In response to the question whether the local authority had hard to place children who had not been placed as a result of Catholic Care suspending its operations⁷, the six answers received were as follows:
- 54.1 "*My inclination would be to say that we have not had children who have not been adopted during this time as we have placed all our children.*" (North East Lincolnshire Council)
- 54.2 "*It therefore seems unlikely that it could reasonably be argued that there have been such children in Wandsworth who have not been adopted as a result of Catholic Care ceasing to accept applications.*" (Wandsworth Borough Council)
- 54.3 "*Newport has not been affected by Catholic Care's actions. We have been able to identify alternative sources for potential adoptive parents.*" (Newport City Council)
- 54.4 "*We have continued to source appropriate placements from a number of Voluntary Adoption Agencies and have not noted additional difficulties in sourcing appropriate placements.*" (Rotherham Metropolitan Borough Council)
- 54.5 "*We have been able to place either within our own resources or with other agencies. We particularly concentrate on working with our colleagues within our consortium.*" (Barnet Borough Council)

⁷ The charity suspended the operation of its adoption service from 1 January 2009 as the temporary exemption for faith-based adoption agencies from the prohibition on discrimination on the grounds of sexual orientation ended on 31 December 2008.

- 54.6 *“We have over the last few years placed several children with families approved for adoption by Catholic Care. These have been hard to place children for whom we could not identify families within our own resources. Catholic Care is one of a number of agencies who specialise in approving families for these children, so it is not therefore possible to identify specific children who have not been adopted as a result of the actions of this agency.”* (Hull City Council)
55. In response to the question, *“if Catholic Care closed its adoption service, does the local authority consider there would be children who could have been adopted who would then not be adopted?”*, the replies received were
- 55.1 *“I do not consider it is possible to say this; however, Catholic Care can describe how many children they placed each year and therefore how many families will need to be picked up by other agencies and how many potential placements would be lost. This will not greatly affect this authority.”* (North East Lincolnshire Council)
- 55.2 *“In the long run, however, adopters will find their way to other agencies if they are motivated to adopt. The loss of a service specializing in providing a service for particularly hard to place children might be considered significant as part of overall provision, but Wandsworth has made successful use of a range of other adoption agencies, both local authority and voluntary, in order to meet the needs of children approved for adoption in a timely manner.”* (Wandsworth Borough Council)
- 55.3 *“Newport do not consider that children would not have been adopted if Catholic Care closed its adoption service.”*(Newport City Council)
- 55.4 *“In the past we would have turned to CC [the charity] when we needed a specific catholic family. This is no longer an issue as Catholic families do not just go to the Catholic agencies and we usually have a small number of Catholic families ourselves. I had not necessarily seen them as concentrating on recruiting adoptive families for hard to place children. The exception to this was my awareness that the CC Nottingham for years has concentrated on assessing families for hard to place children.”* (Barnet Borough Council)
- 55.5 *“If Catholic Care were to close its adoption service, we would look to other agencies to place those children.”*(Hull City Council)
56. The local authorities also dealt with the issue as to whether they would deal with an adoption agency which discriminated on the ground of sexual orientation. Four indicated they would continue to

use the agency. Two expressed reservations. One of the two was concerned that working with a voluntary adoption agency which excludes gay and lesbian adopters might damage the trust which the Council seeks to maintain with gay and lesbian residents, parents, carers and adopters. The other was concerned that the adopters had not had the opportunity to explore how they would feel about or help a child they had placed with them, who was exploring his or her own sexuality.

57. The charity's solicitors have included with their submission two reports – Adoption and the Interagency Fee, a research report from DCSF dated September 2009, and No Place Like Home, a research note, from Policy Exchange. Both these reports refer to the problems arising with the use of voluntary adoption agencies by local authorities. The DCSF report quotes from an earlier survey by RedOchre and state:

“The RedOchre team described the relationship between LAs and VAAs as often tense and uncooperative with limited commissioning of adoption services.” (Page 14)

58. In the Policy Exchange report the researchers state:

“Lacking the stability and framework of a contract to work within, VAAs find themselves with no means of fully predicting the pipeline of cases that may or may not be presented to them.”

59. The Policy Exchange report states that:

“.....across adoption support services as a whole, the number of new referrals from the public to the voluntary sector has declined by almost 40% in the period 2006/07 to 2008/09.”

60. In addition, the report indicates that the difficulties arising between local authorities and voluntary adoption agencies are hampering “the development of a more innovative, diverse and advanced provider base”. What is indicated in these reports is that voluntary adoption agencies are underused by local authorities, possibly because of the apparently larger fees to the local authority when using voluntary adoption agencies. Accordingly, this makes it difficult to show that there would not be sufficient capacity within the other agencies to take up the demand for prospective parents if Catholic Care closed its adoption service. This is especially the case given that the number of placements for adoption made by Catholic Care in a year appears to be around 10. This is further supported by the six responses from local authorities who all refer to being able to place the children they have for adoption.

61. While the reports do lend support to the view that voluntary adoption agencies generally have fewer placements for adoption of hard to place children that break down, the reports do not support any

suggestion that the charity's approach produces any significantly better outcome than any other voluntary adoption agency. The charity's failure rate of 5% does not vary significantly from the failure rate of 6% across all voluntary adoption agencies given in the Policy Exchange report for the year 2008.

62. Catholic Care itself indicates that same sex couples will have no difficulty in finding another agency to deal with their application for adoption. If that is the case, it is difficult to see why the prospective parents Catholic Care do deal with would have a problem finding another agency to deal with their application if Catholic Care had to close its adoption service.
63. It is appreciated that the charity does provide a valuable, high quality service on which much love and care has been bestowed for many years and that if this is withdrawn, this may have a negative impact which is difficult to quantify. The evidence from the local authorities indicates that the suspension of the charity's services for the past eighteen months has not resulted in children not being adopted who would otherwise have been placed for adoption. Nevertheless it is certainly possible there may be occasions when a child has to wait longer for an adoption place than would otherwise be the case. The Commission notes that in his evidence to the Tribunal, Mr Wiggin, the former Chief Executive of the charity, states at paragraph 25 of his witness statement dated 16 January 2009 regarding the consequences of the charity closing its adoption service:

"At best it would mean some might wait longer for a placement and some might not receive the level of support and assistance that the Charity can provide which would mean their continued placement could be at risk and might lead to breakdown. At worst the loss of the Charity's Adoption Services would mean that some children, particularly "hard to place" children may never have the benefit of true family life and may have a permanent life or at least extended period of life in the local authority Care system."

64. The Commission notes that this is tentative and different from the more categorical statement in the charity's case to the court which Mr Justice Briggs summarised as *"but for Catholic Care's work in that field, those children would therefore not have been adopted that year or, probably, at all"*.
65. The Commission further notes that the Trustees' Report to 31 March 2009 states that in the event of closure of the adoption service:

"Continuity of post adoption services for Leeds, Hallam, and Middlesborough Diocese is planned and the Charity will apply to Ofsted for registration as an adoption support agency. The Charity will continue to assist Catholic families who wish to

adopt by providing advice and support to them and by directing them to other adoption agencies. Research into new services to support families and individuals who have already been through the adoption process will be researched and where possible the Charity will plan new support services for them.”

The charity confirmed orally to the Commission that it still had these intentions.

66. The Commission considers that in the light of all the information before it, the effect of the charity closing its adoption service is not of the weight the charity maintains and the Commission is not satisfied that it constitutes a sufficiently weighty reason justifying the proposed discrimination.

Children’s interests are paramount

67. Section 1 of the Adoption and Children Act 2002 applies whenever a court or adoption agency is coming to a decision relating to the adoption of a child. Under section 1(2) the paramount consideration of the court or adoption agency must be the child’s welfare, throughout his or her life. The charity refers in its submission to the interests of the children being paramount (see paragraph 17.3 of its submission).
68. In the case of **In re P** [2009] 1 AC 173 which concerned adoption, Lord Hope in his judgment stated:

“The aim sought to be realised in regulating eligibility for adoption is how best to safeguard the interests of the child. Eligibility simply opens the door to the careful and exacting process that must follow before a recommendation is made. The interests of the child require that this door be opened as widely as possible. Otherwise there will be a risk of excluding from assessment couples whose personal qualities and aptitude for child rearing are beyond question. To exclude couples who are in an enduring family relationship from this process at the outset simply on the grounds that they are not married to each other would be to allow considerations favouring marriage to prevail over the best interests of the child. I do not think that this can be said to be either objectively justified or proportionate.”

69. The Commission appreciates that this case related to the application of statutory regulations arising under the Adoption (Northern Ireland) Order 1987, but the Order, like the Adoption and Children Act 2002, provided that the welfare of the child was the overriding consideration. In applying Article 14 and Article 8 the House of Lords considered that *“the law required the interests of each child to be examined on a case-by-case basis”* (Lord Hoffman, paragraph 16 – emphasis added). Lord Hoffman went on to state at paragraph 18:

“It is one thing to say that, in general terms, married couples are more likely to be suitable adoptive parents than unmarried ones. It is altogether another to say that one may rationally assume that no unmarried couple can be suitable adoptive parents. Such an irrebuttable presumption defies everyday experience.”

He did not consider that “a reasonable generalisation” could be “turned into an irrebuttable presumption **for individual cases.**”
(Paragraph 20 – emphasis added)

70. In **In re P** the law lords based their decision on the case law on the treatment of gay or lesbian persons in the adoption process. Accordingly, the Commission considers that similar considerations are likely to apply to discrimination on the ground of sexual orientation.
71. Following the approach adopted by Lord Hope, the Commission considers that there may be cases where a same sex couple would be the most appropriate match for a particular child. Accordingly, for the charity to exclude such couples from its adoption process would prima facie mean that the “door” was not being opened as widely as possible “*in the best interests of the child*”, which the Adoption and Children Act 2002 requires should be the paramount consideration for an adoption agency as well as a local authority.
72. The Commission noted that the charity also stated that it intended to discriminate against unmarried couples in its adoption service although it was not seeking a specific power to do so. The charity’s solicitor stated orally that it was lawful to discriminate on this basis and the charity could not be challenged for doing so.
73. In the Tribunal decision dated 1 June 2009 in the case of the charity the Tribunal stated:

“As the Tribunal has now concluded that the proposed activities would be unlawful, it was not necessary for it to go on to conclude finally whether there was a public benefit justification for permitting discrimination under regulation 18However, the Tribunal doubts from Mr Wiggin’s evidence that the requisite public benefit could have been demonstrated, given that his evidence was that the proposed alteration of the Appellant’s objects arose substantially out of a desire to maintain a principled stance, rather than being designed to advance the Appellant’s charitable purpose of the support, relief and care of children and young families without families to care for them.”
74. While the Tribunal’s reasoning as to the unlawfulness of the proposed activities was rejected by the High Court, their evaluation of the evidence of the charity with regard to the issue of public benefit is a relevant factor in considering this case.

Access by gay or lesbian persons to adoption services

75. Another aspect of the charity's argument is that gay or lesbian couples will still be able to access adoption services, just not through the charity. They state at paragraph 13.3.14 of their submission that *"there are numerous non-faith based voluntary adoption agencies which can claim the high average success rate for hard to place children while there are the local authority agencies which can be expected to meet the need of the couple [who] wish to find an easy to place child."*
76. The charity in its oral submission strongly maintained that there was no dis-benefit to gay and lesbian persons which would arise from the proposed amendment to the objects of the charity. The Commission does not agree with this. It is clear from the case law that discrimination on the basis of sexual orientation is in itself generally unacceptable and contrary to human rights law. Mr Justice Briggs at paragraph 99 of the Approved Judgment considered that a large public dis-benefit was *"likely to flow from any unjustified, and therefore discriminatory, differential treatment."*
77. There are two European law cases on the rights of gay or lesbian persons to be considered as prospective parents in adoption. This law is followed by the courts of England and Wales.
78. In **Salgueiro Da Silva Mouta v Portugal** (2001) 31 EHRR 47 the European Court of Human Rights considered a decision of the Court of Appeal in Portugal granting custody of the applicant's daughter to his former wife rather than to him purely because of his sexual orientation. The Court considered that the Court of Appeal had based its decision on the sexual orientation of the applicant. It acknowledged that protecting the rights and health of children was a legitimate aim. However, it went on to say at paragraph 36:
- "One is obliged to conclude, therefore, in view of what has been stated, that the Appeal Court used a distinction dictated by considerations relating to the applicant's sexual orientation, a distinction which cannot be tolerated under the Convention. Accordingly, the Court cannot conclude that a reasonable relationship of proportionality existed between the means used and the aim envisaged; there was therefore a breach of Article 8 in conjunction with Article 14."*
79. In the case of **EB v France** (2008) 47 EHRR 21 the European Court of Human Rights stated at paragraph 91:
- "Where sexual orientation is in issue, there is a need for particularly convincing and weighty reasons to justify a difference in treatment regarding rights falling within Art.8."*

80. In that case the French court had refused the application of a single person to adopt on two main grounds:
- (a) *“the lack of a paternal or maternal referent in the household..”*
 - (b) *“the applicant did not provide requisite safeguards for adopting a child.....”*
81. The European court found that the applicant’s sexual orientation had been a determining factor in the French court’s decision on those grounds. It went on to state at paragraph 94:
- “The Court points out that French law allows single persons to adopt a child, thereby opening up the possibility of adoption by a single homosexual, which is not disputed. Against the background of the domestic legal provisions, it considers that the reasons put forward by the Government cannot be regarded as particularly convincing and weighty reasons to justify a difference in treatment regarding rights falling within Art.8.”*
82. Accordingly, both these cases emphasised the importance of the principle of human rights law that discrimination on the grounds of sexual orientation *“cannot be tolerated”* unless particularly weighty and convincing reasons exist.
83. The Commission appreciates that in both these cases the court was concerned with prohibitions that prevented gay or lesbian persons adopting at all. However, in **R (Carson) v Secretary of State for Work and Pensions** [2006] 1 AC 173 Lord Hoffman states:
- “Characteristics such as race, caste, noble birth, membership of a political party and.....gender, are seldom, if ever, acceptable grounds for differences in treatment.”*
84. The reason for this was that there are certain grounds of discrimination which *“prima facie appear to offend our notions of the respect due to the individual”* (Lord Hoffman in paragraph 15). Lord Hoffman went on to make clear that discrimination on the grounds of sexual orientation was now firmly in this category (paragraph 17).
85. The Commission notes that the case law establishes that discrimination on the basis of sexual orientation is a serious matter because it departs from the principle of treating people with equal respect. Accordingly, it can only be justified where there are particularly convincing and weighty reasons.
86. There are other cases on discrimination on the ground of sexual orientation in cases other than adoption. In **Karner v Austria** (2004) 38 EHRR 24 the European Court on Human Rights considered a case where a person was unable to succeed to the tenancy of his

deceased partner with whom he had lived in a homosexual relationship.

“The Court reiterates that, for the purposes of Art. 14, a difference in treatment is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Furthermore, very weighty reasons have to be put forward before the Court could regard a difference in treatment based exclusively on the ground of sex as compatible with the Convention. Just like differences based on sex, differences based on sexual orientation require particularly serious reasons by way of justification.”

87. The Court went on to find:

“The aim of protecting the family in the traditional sense is rather abstract and a broad variety of concrete measures may be used to implement it. In cases in which the margin of appreciation afforded to Member States is narrow, as the position where there is a difference in treatment based on sex or sexual orientation, the principle of proportionality does not merely require that the measure chosen is in principle suited for realising the aim sought. It must also be shown that it was necessary to exclude persons living in a homosexual relationship from the scope of application of s.14 of the Rent Act in order to achieve that aim. The Court cannot see that the Government has advanced any arguments that would allow of such a conclusion.”

88. In **Kozak v Poland** (Application no. 13102/02 – 2 March 2010) the European Court of Human Rights considered the case of a person who was rejected from qualifying for inheritance of a tenancy in the name of his partner who had died on the basis that homosexual relationships were not within the definition of “*de facto* marital relationships”. The court stated:

“Sexual orientation is a concept covered by Article 14. Furthermore, when the distinction in question operates in this intimate and vulnerable sphere of an individual’s private life, particularly weighty reasons need to be advanced before the court to justify the measure complained of. Where a difference of treatment is based on sex or sexual orientation the margin of appreciation afforded to the State is narrow and in such situations the principle of proportionality does not merely require that the measure chosen is in general suited for realising the aim sought but it must also be shown that it was necessary in the circumstances. Indeed, if the reasons advanced for a difference in treatment were based solely on the applicant’s

sexual orientation, this would amount to discrimination under the Convention.”

89. The Court then considered the grounds relied on as being “*objective and reasonable justification*” for the difference in treatment. It stated:

“.....the essential objective of the difference in treatment was to ensure the protection of the family founded on a “union of a man and a woman” as stipulated in Article 18 of the Polish Constitution.....The Court accepts that protection of the family in the traditional sense is, in principle, a weighty and legitimate reason which might justify a difference in treatment”

90. The Court concluded

“Striking a balance between the protection of the traditional family and the Convention rights of sexual minorities is, by the nature of things, a difficult and delicate exercise, which may require the State to reconcile conflicting views and interests perceived by the parties concerned as being in fundamental opposition. Nevertheless, having regard to the State’s narrow margin of appreciation in adopting measures that result in a difference based on sexual orientation, a blanket exclusion of persons living in a homosexual relationship from succession to a tenancy cannot be accepted by the Court as necessary for the protection of the family viewed in its traditional sense.”

91. The Commission notes that In none of these cases were any of the arguments put forward sufficient to defeat the principle that discrimination on the grounds of sexual orientation was generally unacceptable.
92. The Commission notes the charity’s argument that, taken with all other factors, the harm to the children if the services were terminated was greater than the harm to same sex couples if the services were not available to them. This is stated to be because there are other agencies to which same sex couples could go. The Commission considers that it is in the interests of children awaiting adoption that applications from same sex couples are considered as well as those of heterosexual couples. In addition, it is not considered that the availability of other routes to adoption for same sex couples is itself an appropriate justification for discrimination against such persons. A shop which refused to serve gay or lesbian people could not argue that this was acceptable because they could go to the shop down the road just as such a shop could not refuse to serve people on the ground of their race or ethnicity. This is because discrimination on certain grounds such as race, sex, sexual orientation is in itself generally unacceptable to the community as well as to the individuals directly affected. Prohibition of such discrimination is a fundamental principle of human rights law.

Same sex couples and children who are hard to place

93. The charity's solicitors have asserted that the charity specialises in children who are hard to place and in response to the submission by the Equality and Human Rights Commission stated the following:

“Moreover the statistics do not justify the proposition that same sex couples would wish to use the services of a charity seeking exclusively to work in the field of adoptions of children in the category of the hard to place. There is no evidence – see Table E of the Report - that any of the 130 same sex couples who adopted in the year took a placement of a child over 4 years of age. It is also clear that hard to place adoptions are rare, if not unknown, in the case of same sex couples.”

94. The statistics referred to are contained in the Statistical First Release which provides information about looked after children in England for the year ending 31 March 2009. It is correct that Table E2 does not provide any evidence that any of the 130 same sex couples who adopted took a placement of a child over 4 years of age. However, it is also true that it does not provide any evidence that those couples did not take a placement of a child over 4 years of age.
95. The letter from the British Association for Adoption and Fostering dated 21 May 2010 indicated that children placed through either the Be My Parent scheme or the Adoption Register are by definition difficult to place. In the Be My Parent scheme in 2007 to 2008 7 out of 133 placed children were placed with same sex couples; in 2008 to 2009 4 out of 131 placed children were placed with same sex couples; in 2009 to 2010 3 out of 111 placed children were placed with same sex couples.
96. On the Adoption Register it was noted that as at the date of the letter there were 30 same sex couples on the Register and 70% would consider a sibling group. This compared with 43% of all adopters currently on the register. 62% of same sex couples would consider a child aged 5 years or above. This compared with 52% of all adopters currently on the register.
97. The Commission also noted the evidence in the letters from the local authorities that their experience was that same sex couples on various occasions had taken a child who was hard to place. The responses received were as follows:

97.1 *“Older, harder to place children are the more likely to be matched with a same sex couple than a straightforward, healthy very young child”* (North East Lincolnshire Council)

- 97.2 *"We have made adoptive placements of children with quite complex needs with gay and lesbian adopters. These adoptive placements appear to have been both robust and demonstratively successful in meeting the children's needs."* (Wandsworth Borough Council)
- 97.3 *"we have found that hard to place children have been successfully placed with same sex couples on very many occasions."* (Newport City Council)
- 97.4 *"A number of our successful placements of children with additional challenges have been with Gay and Lesbian adopters. In our experience Gay and Lesbian adopters are more likely to consider a match with a child with additional difficulty. The reasons for this are complex but include the fact that they are less likely to have an existing family and for many, that their experience of facing discrimination themselves brings additional understanding of the complexity of some children's needs."* (Rotherham Metropolitan Borough Council)
- 97.5 *"we have made some excellent placements of older children and sibling groups with same sex couples and single gay men. We have found that they often present with a flexibility and sensitivity to cope with children who present with a level of difficulty".* (Barnet Borough Council)
- 97.6 *"In my experience hard to place children are frequently placed with same sex couples."* (Hull City Council)

98. In its response to the letters from the Local Authorities, the charity acknowledged that "hard to place children can be placed with same sex couples". It stated that "the frequent placement of hard to place children with same sex couples is not supported by official figures." The Commission acknowledges that the number of such placements may, at present, be less than "frequent" but not that they are "rare, if not unknown" as the charity had previously suggested. The Commission also notes the comment of New Family Social that

"Same-sex adoption is only possible since 31 December 2005 and - given that the assessment process and matching process together takes several months, usually at least over a year until placement if not longer - the current statistics and research on same-sex couple adoption in the UK (let alone research on 'outcomes') is still very limited."

It seems clear that, based on experience, the Local Authorities all see a positive role for single sex adopters in hard to place cases.

The reasons for the proposed discrimination

99. In his witness statement for the Tribunal, the Bishop of Leeds stated at paragraph 5:

“As the Bishop of the Diocese in which the Charity is based, I am responsible for ensuring that the activities undertaken by the Charity remain at all times within the tenets of the Church, in effect I am the arbiter of faith in respect of the activities of the Charity.”

100. The Bishop went on to say at paragraph 21:

“In my roles as Bishop I had to confirm to the Trustees that if they chose to dissociate the Charity from the Church it would be unlikely that the Charity would be able to benefit from collections to aid the work of social care charities in the Diocese and would not be permitted to continue to claim a connection with the Church.”

101. In their submission of April 2010, the charity states that *“the Bishop of Leeds has confirmed that the tenets of the Church describe a family unit as being in the image of the Nazarene family; namely a married couple with a child or children. The tenets do not recognise a union between two people of the same sex and, therefore, the creation of [such] a family unit by an agency connected to the Church is not permissible.”* As a result, the charity cannot provide an adoption service which does not discriminate and remain connected to the Church.

102. As indicated above, if the charity does not discriminate in the provision of its adoption service, it will not be able to benefit from the charitable collections made by the Church in the Diocese. As the charity stated in its submission, *“.....official donations will cease and the most that can be hoped for is individual donations from Catholics who are not disposed to stop their individual giving by the abandonment of principles central to church teaching.....”*

103. The charity reiterated in its oral submission that the basis for it wishing to discriminate on the ground of sexual orientation was its adherence to the principle of the Holy Family of Nazareth. They explained that the Church did not itself wish to create a new family via adoption that was not based on a heterosexual married couple modelled on Mary and Joseph. They emphasised that the Church’s objections to homosexual practice were irrelevant to this application, and such objections are not included in the witness statements for the Tribunal from the Archbishop of Birmingham and the Bishop of Leeds. Moreover, it is clear that the proposed objects would discriminate equally against celibate and sexually active homosexual people.

104. The charity acknowledged they had on one occasion, ten years ago, made an exception in their adoption work to the key principle of the

Nazarene family in favour of a single individual. The Commission also notes that on its website the charity states that *“the adoption service undertakes assessments of prospective adoptive married couples or single people.”* The Commission understands that another Catholic adoption agency, which submitted evidence to the Tribunal and took a similar approach with regard to the application of the tenets of the Church, made similar exceptions in favour of a single person in 2007 and 2008. The Commission notes therefore that the charity appears to have some discretion in applying and interpreting the Nazarene family principle in exceptional cases.

105. In so far as the reason for the proposed discrimination relates to the tenets of the Catholic faith, the court in the Approved Judgment held that *“respect for the religious beliefs motivating such faith-based adoption agencies would not be likely to constitute a justification of differential treatment in favour of heterosexual couples under Article 14 (of the European Convention) because of the essentially public nature of their activities.....”*⁸
106. The Commission was not satisfied that the attitudes and views of those providing part of the funding for a service provided by the charity would justify discrimination on the ground of sexual orientation by the charity itself whose activities are regulated by regulation 18. In addition, in **Smith and Grady v United Kingdom** (2000) 29 EHRR 493 the applicants had been discharged from the Royal Navy on the sole ground of their homosexuality. One of the aspects relied on by the UK was *“the negative attitudes of heterosexual personnel towards those of homosexual orientation”*. The Court stated that

“The question for the Court is whether the above-noted negative attitudes constitute sufficient justification for the interferences at issue.”

The court held that they did not.

107. To the extent that the attitudes of the donors to the charity (i.e. Catholic Care) are based on religious conviction, they are insufficient to justify the discrimination by the charity because of the public nature of the charity’s activities. To the extent that they are based on negative attitudes to gay or lesbian persons as parents, that is also unacceptable as a justification by the charity for the proposed discrimination.
108. It is fairly common for charities to have to close down or refocus part of their operation because sufficient funding is no longer available. This may be unfortunate but in itself does not constitute the kind of particularly convincing or weighty reasons that would be necessary under the law to justify the proposed discrimination.

⁸ Paragraph 84 of the Approved Judgment

Conclusion

109. Discriminating on the ground of sexual orientation is generally unacceptable and can only be justified by particularly convincing and weighty reasons.
110. The Commission considers that the charity has not met the requirement for showing that there are particularly convincing and weighty reasons justifying the proposed discrimination.
111. The Commission notes that the charity has previously departed from the principle of the Holy Family of Nazareth on one occasion in its consideration of applications for adoption and that it advertises that it undertakes assessments of single people.
112. As Mr Justice Briggs in the High Court indicated:

“respect for the religious beliefs motivating such faith-based adoption agencies would not be likely to constitute a justification of differential treatment in favour of heterosexual couples under Article 14 (of the European Convention) because of the essentially public nature of their activities.”
113. The Commission notes that the charity has particular expertise in the area of hard to place children although it is not clear that this is different from the expertise of other voluntary adoption agencies who are also dealing with hard to place children. The Commission notes the evidence of successful placement of hard to place children with same sex couples and that it is likely to be in the interests of children awaiting adoption that the available pool of prospective parents includes same sex couples.
114. The Commission recognises the valuable work carried out by the charity and regrets that the charity considers that, if it is unable to discriminate, it will have to close its adoption service. The Commission notes the claim that if the charity closes its adoption service, children who would otherwise have been adopted will remain in care. The numbers are small, as the charity has on average provided parents for 10 children a year. In any event, there is no evidence from local authorities that the children will not be adopted and indeed the evidence from the local authorities which the Commission has indicates that the opposite is true i.e. that those children may well be placed for adoption through other channels.
115. The Commission notes the unsatisfactory nature of some aspects of the adoption system. In particular, there is clearly difficulty for voluntary adoption agencies in providing the service they do without subsidising from their own sources of funding the work which is only partly funded by the local authority. However, the fact that some donors will not fund the work if the charity accepts same sex

couples as prospective parents does not justify the proposed discrimination.

116. The Commission has decided that the proposal in the proposed objects to consider as prospective parents for its adoption service only those who are heterosexual would not be justified as a proportionate means of achieving a legitimate aim. Accordingly, it considers that the proposed objects would not be for the public benefit because of the large public dis-benefit which flows from unjustified discrimination on the ground of sexual orientation.
117. The Commission therefore does not give its consent to the proposed change of objects set out in paragraph 15 of this decision.